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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JOSHUA ADAM SCHULTE,

Plaintiff,

-v.-

UNITED STATES OF AMERICA, TIMOTHY  
VALENTINE, JOHN BARRETT, BRIAN  
THROWAY, MICHAEL SINKOVICH, MARK  
BURNS, MICHAEL GETCHEY, and JAMEY  
WELCH,

Defendants.

20 Civ. 2795 (PGG) (GWG)

**UNITED STATES OF AMERICA’S  
ANSWER**

Defendant United States of America (“United States”), by its attorney Audrey Strauss, United States Attorney for the Southern District of New York, hereby answers the Amended Complaint of Joshua Adam Schulte (“Plaintiff”), ECF No. 33, on information and belief as follows:

1. Section I of the Amended Complaint consists of Plaintiff’s characterization of his claims, to which no response is required.
2. The United States admits the allegations contained in Section II of the Amended Complaint that Plaintiff is currently located at the Metropolitan Correctional Center (“MCC”) at 150 Park Row, New York, NY 10007, and that his Prisoner Identification Number is 79471-054.

3. The United States admits the allegation contained in Section III of the Amended Complaint that Plaintiff is currently a pretrial detainee.

4. The United States admits the allegation contained in Section IV of the Amended Complaint that it has been named as a defendant in this action and that Jamey Welch, Michael Getchey, Mark Burns, Timothy Valentine, John Barrett, Brian Thiroway, and Michael Sinkovich, who are employees of the Federal Bureau of Prisons (“BOP”) located at Federal Correctional Institute Schuylkill, Interstate 91 and 901W Minersville, PA 17954, are named as defendants in this action. The United States lacks knowledge and information sufficient to form a belief as to the allegation contained in Section IV that there are additional defendants who are unknown BOP officers that have not yet been identified.

5. The United States denies the allegations contained in Section V of the Amended Complaint, except admits that the incident giving rise to this action occurred on March 8, 2020, at MCC in and around Units 9 and 10 South.

6. The United States denies the allegations contained in Section 5.1 of the Amended Complaint, located on page 7 of 13, ECF No. 33.

7. The United States denies the allegations contained in Section 5.2 of the Amended Complaint, located on page 8 of 13, ECF No. 33.

8. The first paragraph of Section 5.3 of the Amended Complaint, located on page 9 of 13, ECF No. 33, contains conclusions of law to which no response is required. The United States denies the allegation contained in the second paragraph of Section 5.3 of the Amended Complaint that Plaintiff “immediately filed for administrative remedy after the incident but received no response.” The United States denies the allegation contained in the second paragraph of Section 5.3 of the Amended Complaint that “there is effectively no administrative

remedy available to anyone at the MCC, within the [BOP] Northeast Regional Office, or indeed anyone” under BOP custody. The United States denies the allegations contained in the last paragraph of Section 5.3 of the Amended Complaint, except admits that Plaintiff filed a complaint, on April 12, 2019, in *Schulte v. Attorney General of the United States et al.*, No. 19 Civ. 3346 (PAC). The United States respectfully refers the Court to the docket in that action for a complete and accurate statement of its contents.

9. The United States denies the allegations contained in the first paragraph of Section 5.4 of the Amended Complaint, located on page 10 of 13, ECF No. 33, except admits that Plaintiff’s action, *Schulte v. Attorney General of the United States et al.*, No. 19 Civ. 3346 (PAC), was administratively closed on August 14, 2019 (ECF No. 11), and that on January 19, 2021, Plaintiff filed a petition for a writ of habeas corpus relating to his conditions of confinement on the docket in his criminal case, *see United States v. Schulte*, Dkt. No. 447, No. 17 Cr. 548 (PAC). The United States denies the allegations contained in the remainder of paragraph of Section 5.4 and the first three lines of Section 5.5 of the Amended Complaint, which consist of quotations from Plaintiff’s habeas petition.

10. The United States denies the allegation contained in the first sentence of the first full paragraph of Section 5.5 of the Amended Complaint, located on page 11 of 13, ECF. No. 33. The United States denies the allegation contained in the second sentence of the first full paragraph of Section 5.5 of the Amended Complaint that Plaintiff received no response to his administrative remedy request for his Federal Tort Claims Act (“FTCA”) complaint in the instant case. The third sentence of the first full paragraph of Section 5.5 of the Amended Complaint consists of a conclusion of law, to which no response is required. The final sentence of the first full paragraph of Section 5.5 of the Amended Complaint consists of Plaintiff’s request for relief,

to which no response is required. To the extent a response is deemed required, denies that Plaintiff is entitled to the requested relief.

11. The allegations contained in Section VI of the Amended Complaint consist of Plaintiff's request for relief, to which no response is required. To the extent a response is deemed required, denies that Plaintiff is entitled to the requested relief.

12. Section VII of the Amended Complaint contains Plaintiff's certifications and warnings to which no response is required.

### **DEFENSES**

Any allegations not specifically admitted or denied are hereby denied. For further and separate answer, the United States allege as follows:

#### **FIRST DEFENSE**

The complaint fails to state a claim on which relief can be granted.

#### **SECOND DEFENSE**

To the extent plaintiff failed to exhaust all available administrative remedies properly, as required by the applicable statutes and regulations, this action is barred in whole or in part.

#### **THIRD DEFENSE**

Plaintiff's claims are subject to, and limited by, the Federal Tort Claims Act ("FTCA"). 28 U.S.C. §§ 1346(b), 2671, *et seq.*

#### **FOURTH DEFENSE**

Plaintiff's recovery, if any, is limited to the amount set forth in his administrative claim presented to the BOP. 28 U.S.C. § 2675.

**FIFTH DEFENSE**

The United States, through its employees and agents, acted with due care and diligence at all relevant times.

**SIXTH DEFENSE**

Plaintiff may not recover pre-judgment interest or punitive damages pursuant to 28 U.S.C. § 2674.

**SEVENTH DEFENSE**

Plaintiff is not entitled to a jury trial pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2402.

**EIGHTH DEFENSE**

Any recovery by Plaintiff against defendant United States of America is subject to the availability of appropriated funds. 42 U.S.C. § 233(k).

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The United States may have additional defenses that are not known at this time but may become known through discovery. Accordingly, the United States reserves the right to assert each and every affirmative or other defense that may be available.

WHEREFORE, the United States respectfully requests that the Court: (1) dismiss the complaint with prejudice; (2) enter judgment in favor of the United States; and (3) grant such further relief as the Court deems just and proper.

Dated: New York, New York  
August 27, 2021

Respectfully submitted,

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